REMARKS

This responds to the Office Action mailed July 24, 2008. Claims 1, 3, and 23 have been amended. As a result, claims 1, 3-7, 23-24, and 26-30 are now pending in this application. Applicants respectfully request reconsideration of the application in view of the above amendments and the following remarks in support thereof.

§103 Rejection of the Claims

Claims 1, 3-7, 23-24, and 29-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,986,156 to Rodriguez et al. (hereinafter "Rodriguez") in view of U.S. Patent Application Publication No. 2003/0149988 to Ellis et al (hereinafter "Ellis"). Claims 27-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Ellis and in further view of U.S. Patent No. 6,262,721 to Tsukidate et al. (hereinafter "Tsukidate"). As will be fully explained below, Rodriguez and Ellis do not teach the subject matter for which they are relied upon, and further amended independent claims 1, 3, and 23 and all their dependent claims are not obvious over Rodriguez in view of Ellis or Rodriguez in view of Ellis and Tsukidate.

Although the Applicants believe that the original pending claims are defined over the art of record, the Applicants have amended independent claims 1, 3, and 23 to clarify that "each version of said program having a different content from each other version from said plurality of versions."

In support of the 35 U.S.C. § 103(a) rejections, the Office Action asserts that Rodriguez discloses "a program containing a plurality of versions," as recited in amended independent claims 1 and 3, and similarly, "a plurality of versions of a program," as recited in amended independent claim 23. Applicants respectfully traverse the Office Action because, in particular, the Office Action particularly pointed out that Rodriguez discloses a "plurality of broadcast version of the movie" (col. 22, lines 35-36). However, it should be appreciated that Rodriguez also discloses that the time shifts between the plurality of broadcast version of the movie may be compared "according to the NVOD delivery mode with staggered start times" (col. 22, lines 36-37). According to Rodriguez, the NVOD "is a technique known as 'near video-on-demand'"

where "programs that are in high demand are broadcast on multiple channels with a short, preset interval between the starting time of each program broadcast" (col. 1, lines 59-63). For example, "a two-hour movie may be broadcast on seven consecutive channels with the starting broadcast time of each channel offset by fifteen minutes from that of a neighboring channel" (col. 1, lines 63-66). As a result, the "plurality of broadcast version" disclosed in Rodriguez refers to the same movie with "staggered start times."

In contrast, amended independent claims 1, 3, and 23 recite a program containing a plurality of versions with "each version of said program having a different content from each other version from said plurality of versions." Since Rodriguez discloses various versions of a movie with the same content, Rodriguez does not teach or suggest to one having ordinary skill in the art a program containing a plurality of versions with "each version of said program having a different content from each other version from said plurality of versions," as recited in independent claims 1, 3, and 23.

Furthermore, the Office Action asserts that Ellis discloses "making a decision to broadcast [said at least] one version of said plurality of versions of said program based upon a frequency of said one or more requests received" or "based upon a number of said received requests," as recited in amended independent claims 1 and 3, respectively. Similarly, the Office Action asserts that Ellis discloses the "broadcast [of] said at least one available version of said plurality of available versions of said program if said one or more requests meets said predetermined criteria, wherein said predetermined criteria includes a number of one or more requests for each of said plurality of versions," as recited in amended independent claim 23.

Again, the Applicants respectfully traverse the Office Action because of the incorrect characterization made by the Office Action. In particular, Ellis discloses that "it may not be desirable to record a program unless a certain number of users have requested it" (paragraph 86). However, amended independent claims 1, 3, and 23 recite the broadcast of a version or available version of a program. The "recording" of "programs on recordable compact disks (CDs) or digital versatile disks (DVDs)," as disclosed in Ellis, is completely different from a "broadcast" of a version or available version of a program, as recited in amended independent claims 1, 3, and 23 (paragraph 80). Accordingly, Ellis does not teach or suggest to one having ordinary skill

in the art a broadcast of a version or available version of a program, as recited in amended in dependent claims 1, 3, and 23.

The Office Action also asserts that "[i]t would have been obvious for any person of ordinary skill in the art at that time the invention was made to combine the invention of Rodriguez with the invention of Ellis for the benefit of having a system that can make decision more accurately" (Office Action mailed on July 24, 2008 at page 3). "When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious." KSR v. Teleflex 82 USPQ2d at 1395 (2007).

The teachings of Ellis focus on "[a]n interactive television program guide [that] provides users with an opportunity to select programs for recording on a remote media server ... The program guide provides users with VCR-like control over programs that are played back from the media servers." However, Rodriguez actually discourages or teaches away such a system disclosed by Ellis because, according to Rodriguez, "the problem with implementing a true VOD system," which provides the "ability to perform random-access operations on the program ... as in a conventional Video Cassette Recorder," is "that the most intuitively simple solution in which a central service provides a separate transmission of a program to individual subscribers upon their requests, requires duplication of equipment and substantial bandwidth resources" (Rodriguez at col. 1, lines 42-51). As a result, one having ordinary skill in the art would not have combined Rodriguez and Ellis in the manner proposed because the system disclosed in Ellis would require "duplication of equipment and substantial bandwidth resources" (Rodriguez at col. 1, lines 42-51).

Accordingly, for the above-stated reasons, the Applicants submit that independent claims 1, 3, and 23 are patentable under 35 U.S.C. §103(a) over Rodriguez in view of Ellis. Claims 4-7, 24, and 26-30, each of which depends directly or indirectly from independent claims 1, 3 or 23, are likewise patentable under 35 U.S.C. §103(a) over Rodriguez in view of Ellis or over Rodriguez in view of Ellis and Tsukidate for at least the same reasons set forth for independent claims 1, 3, and 23. Accordingly, the Applicants request the obviousness rejections of pending claims 1, 3-7, 23-24, and 26-30 to be withdrawn.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney 408-278-4047 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 10/23/2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 23 day of October 2008.

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